

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LODGY JACKSON,)	
)	
Movant,)	
)	
v.)	No. 4:23-cv-01139-AGF
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter comes before the Court on self-represented movant Lodgy Jackson's filing received September 11, 2023, which the Court has docketed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (ECF No. 1) The motion is successive and will be denied and dismissed.

Movant is currently incarcerated at the United States Penitentiary in Atwater, California. On February 8, 2013, movant pled guilty in this Court to conspiracy to possess with intent to distribute cocaine, conspiracy to possess a firearm in furtherance of a drug trafficking crime, and possession of a firearm in furtherance of a drug trafficking crime. *See United States v. Jackson*, No. 4:11-cv-00351-AGF (E.D. Mo. Feb. 8, 2013). On December 12, 2013, the Court sentenced movant to imprisonment for a term of 400 months. *Id.* at ECF No. 247. Movant's conviction and sentence were upheld on direct appeal to the Eighth Circuit Court of Appeals. *See United States v. Jackson*, No. 14-1488 (8th Cir. Apr. 10, 2015).

On July 14, 2016, movant filed a motion to set aside, correct, or modify his sentence under 28 U.S.C. § 2255. *See Jackson v. United States*, No. 4:16-cv-01147-AGF (E.D. Mo. filed Jul. 14, 2016). This Court denied the motion on August 12, 2019. *Id.*

On January 26, 2023, movant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the District Court for the Eastern District of California, where he is imprisoned. *See Jackson v. Trate*, No. 1:23-cv-00115-JLT-EPG (E.D. Ca. filed Jan. 26, 2023). The motion was denied on September 18, 2023. *Id.*

On September 11, 2023, while his §2241 motion was pending in California, movant filed in this Court a motion under 28 U.S.C. 2244 for an order authorizing the district court to consider a second or successive application for relief under §§ 2254 or 2255. The motion appears to be on a form for filing in a United States Court of Appeals. Movant has typed onto the form that he seeks to file it in the United States Court of Appeals for the Fifth Circuit. Filed with the form is a “Request for Permission to File a Second in Time 2255 Motion” signed by movant and again captioned for filing in the Fifth Circuit.

Section 2244(b)(3)(A) states in relevant part:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move *in the appropriate court of appeals* for an order authorizing the district court to consider the application.

Id. (emphasis added). Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive motion to vacate unless it has first been certified by the court of appeals.

Liberally construed, it appears movant is attempting to seek from the Fifth Circuit Court of Appeals an order authorizing this Court to consider his second § 2255 motion. It is unclear why movant’s filings are captioned for filing in the Fifth Circuit and it is unclear why he has brought these filings in this Court. If movant seeks to file a second or successive motion under § 2255 to challenge his criminal sentence entered by this Court on December 12, 2013, he must file a motion for authorization in the Eighth Circuit Court of Appeals. The Court has no authority to rule on

movant's § 2255 motion until it has been authorized by the Eighth Circuit Court of Appeals. As a result, the Court may not grant the requested relief and this action must be denied and dismissed.

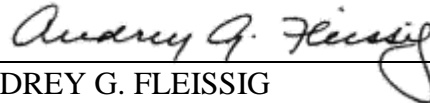
Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside or correct sentence is **DENIED AND DISMISSED as SUCCESSIVE**. [ECF No. 1]

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 22nd day of January, 2024.

A handwritten signature in cursive script, reading "Audrey G. Fleissig", is positioned above a horizontal line.

AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE